IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 29.01.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice N.PAUL VASANTHAKUMAR

Writ Appeal No.655 of 2002

Thanthai Periyar Padipagam,
rep. by its Secretary,
K.Ramakrishnan. ... Appellant/Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Housing and Urban Development
Department, Fort St. George,
Chennai-600 009.

2.The Executive Engineer &
Administrative Officer,
Coimbatore Housing Unit,
TATABAD, Coimbatore-641 012. ... Respondents

Writ appeals filed under Clause 15 of the Letters Patent against the order dated 20.08.2001 made in W.P.No.13208 of 1995 presented under Article 226 of the constitution of India to issue a writ of Certiorarified Mandamus calling for the records of the 2nd respondent pertaining to his Order in Lr.No.LA.I/6597/91 dated 15.09.1985, quash the same and direct the respondents not to interfere with the petitioners use and occupation of premises Thanthai Periyar Padippagam at Sidhapudur Housing Board Colony, Near Thiruvalluvar Transport Corporation Bus Stand, Gandhipuram, Coimbatore, execpt by due procees of law.

WEB COPY

For Appellant : Mr.S.Doraisamy
For 1st respondent : Mr.K.Elango,
Special Government Pleader

For 2nd respondent : Mr.S.Kasikumar for
Mr.K.Chelladurai

https://hcservices.ecourts.gov.in/hcservices/

JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

Thanthai Periyar Padipagam, aggrieved by the order of the learned single Judge dated 20.08.2001 made in W.P.No.13208 of 1995, has filed the above writ appeal.

2. Heard the learned counsel appearing for the appellant as well as the respondents.

3. It is seen that the appellant-Padippagam has filed a Civil suit in O.S.No.1303 of 1991 on the file of the District Munsif, Coimbatore, praying for decree of permanent injunction restraining the defendant, their men, officials, agents and the persons claiming through them from evicting the petitioner/appellant from the suit property. Based on the objection raised by the Coimbatore Housing Unit, it is stated that the said suit was dismissed. It is further brought to our notice that after dismissal of the suit, the Executive Engineer and Administrative Officer, Coimbatore Housing Unit, TATABAD, Coimbatore, by his letter dated 15.09.1995, directed the petitioner to vacate and hand over the encroached portion before 5.00 p.m. on 26.09.1995. The said proceeding was challenged by the petitioner in W.P.No.13208 of 1995. The learned single Judge, by referring O.S.No.1303 of 1991 on the file of the District Munsif, Coimbatore, and finding that the relief cannot granted by this Court under Article 226 of the Constitution of India, has dismissed their writ petition, hence the present writ appeal.

4. Mr.S.Doraisamy, learned counsel appearing for the appellant by drawing our attention to the stand taken by the second respondent herein-Coimbatore Housing Unit in the suit, particularly, in the application for injunction, submitted that as their suit was dismissed by the learned District Munsif, the second respondent is not justified in asking the petitioner/appellant to vacate and hand over the encroached area.

5. We have verified the stand taken by the Executive Officer of the Coimbatore Housing Unit, who filed a counter statement before the District Munsif, Coimbatore. It is seen from the counter affidavit that the Housing Board has no intention to evict the petitioner/appellant(plaintiff therein). It is also stated that eviction has to be carried out only by the Corporation, Coimbatore. In view of the specific stand taken before the District Munsif Court, Coimbatore, we are satisfied that the Executive Officer, Coimbatore Housing Unit is not justified in sending letter dated 15.09.1995, calling upon the petitioner/appellant to evict from the encroached portion. The above mentioned relevant aspects including the dismissal of the suit, have not been considered by the learned single Judge.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6. It is brought to our notice that the first respondent-Government is the appropriate authority either to grant permission or to assign the land in favour of the petitioner/appellant. Taking note of the purpose/object for which the petitioner/appellant seeks permission, we permit the petitioner/appellant to make a representation to the first respondent highlighting their stand, within a period of two weeks from the date of receipt of a copy of this order. If any such representation is made by the petitioner/appellant, the first respondent herein is directed to consider and pass appropriate orders, in accordance with law, within a period of 12 weeks from the date of receipt of the representation from the petitioner/appellant. In view of the fact that the appellant had the benefit of the interim order during the pendency of the writ petition as well as the writ appeal, the appellant is permitted to use the same as Padipagam till final order/decision being taken by the Government as directed above.

7. The writ appeal is disposed of on the above terms. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

raa

To

1.The Secretary to Government,
State of Tamil Nadu,
Housing and Urban Development
Department, Fort St. George,
Chennai-600 009.

2.The Executive Engineer &
Administrative Officer,
Coimbatore Housing Unit,
TATABAD, Coimbatore-641 012.

+1cc to Mr.S.Doraisamy, Advocate Sr 5096
+1cc to Govt. Pleader Sr 5033
+1cc to Mr.K.Chelladurai, Advocate Sr 5484

GM (CO)
km/5.2.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/